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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/561,929

06/02/2006

Joseph Allen Knight

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EXAMINER

GHERBI, SUZETTE JAIME J

ART UNIT

PAPER NUMBER

3738

MAIL DATE

DELIVERY MODE

12/13/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/561,929

Applicant(s)

KNIGHT, JOSEPH ALLEN

Examiner

Suzette J. Gherbi

Art Unit

3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 September 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 and 26-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10-13, 16-24 and 26-32 is/are rejected.
- 7) ☒ Claim(s) 9, 14 and 15 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>9/20/07</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Applicant's amendment dated 9/20/07 has been received in application serial number 10/561,929. All comments have been taken into consideration.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7, 10, 16, 26 and 31-32 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Adams 6,540,781 in views of Thubrikar et al. Adams discloses the invention as claimed noting figure 2a-3b comprising: a vessel-like structure having a first end; a second end; and interposed between the first and second ends a sinus portion configured in the shape of the sinus of Valsalva in a human aortic valve; and wherein the sinus portion has an ostium (see elements 36L and 36R). The intended use recitational/functional language "*adapted for surgical attachment to an aorta* and "*adapted for surgical attachment to a left ventricle*" carries no patentable weight in the absence of any distinguishing structure. As these are not method claims, but structural,

Adams clearly discloses the structure as claimed and is found to be inherently capable of performing the functions. (Nevertheless, please also see for example 2006/0167333 Moore et al. [0035] which teach that tubular vessels like structures having first and second ends can be attached to the aorta and left ventricle).

Nevertheless Adams does not state that the prosthesis is composed of a synthetic material. Thubrikar et al. teaches the claimed structure noting figure 1 and 3 and with regards to claims 16 and 26 teaches that an ostium may be located on the sinus (see figure 14 element 81) and further teaches that the device is made of synthetic material 2:42-43. It would have been obvious to one having ordinary skill in the art at the time the invention was made take the device of Adams and manufacture it from a synthetic material as taught by Thubrikar et al. because it would provide a cost effective prosthesis and would further not be rejected by body as a foreign organ. It would also have been prima facie obvious to modify Adams to obtain the invention as specified in claim 1 because such a modification would have been considered a mere design consideration which fails to patentably distinguish over the prior art of Adams.

Allowable Subject Matter

Claims 9 and 14-15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed 9/20/07 have been fully considered but they are not persuasive. Applicant has revised the claims to state that it is made of a synthetic material. This claim limitation has been discussed supra.

Applicant further contends that claims 16 and 26 do not have an ostium on the coronary sinus. This has been addressed supra.

The intended use of the claim has been taken into consideration however as stated above the do not distinguish in the absence of distinguishing structure.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Suzette J-J Gherbi whose work schedule is Maxi-Flex off every other Friday and whose telephone number is 571-272-4751.


The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


SUZETTE GHERBI
PRIMARY EXAMINER
TECHNOLOGY CENTER 3700

10 December 2007